

ANDA 75-292

February 7, 2002

Apotex Corporation
U.S. Agent for: Novex Pharma
Attention: Marcy Macdonald
50 Lakeview Parkway, Suite 127
Vernon Hills, IL 60061

Dear Madam:

This is in reference to your abbreviated new drug application dated December 22, 1997, submitted pursuant to Section 505(j) of the Federal Food, Drug, and Cosmetic Act (Act), for Fluoxetine Oral Solution USP, 20 mg(base)/5 mL.

Reference is also made to our Tentative Approval letter dated September 1, 2000, and to your amendments dated April 3 and July 10, 1998; June 29 and August 9, 2000; April 13, and November 30, 2001; and February 5, 2002.

The listed drug product referenced in your application is subject to a period of patent protection which expires June 2, 2004, (U.S. Patent No. 4,626,549 [the '549 patent]). Your application contains a Paragraph IV Certification and a Method of Use Statement under Section 505(j)(2)(A)(vii)(IV) and Section 505(j)(2)(A)(viii) of the Act to the '549 patent. You notified the Agency that Eli Lilly and Company initiated a patent infringement action against you on your Paragraph IV Certification on the challenged claim in United States District Court for the Southern District of Indiana (Eli Lilly and Company v. Apotex Corp., Civil Action No. IP-99-95 C B/S. You have also notified us that you prevailed on one claim in the district court and made a Method of Use Statement to another claim.

Furthermore, the Act provides that approval of an abbreviated application that contains a certification described in Section 505(j)(2)(A)(vii)(IV) (a "Paragraph IV Certification"), and that is for a drug product for which a previous abbreviated application has been submitted which also contains a Paragraph IV Certification, shall be made effective not earlier than one hundred and eighty days after:

1. the date the Secretary receives notice of the first commercial marketing of the drug product under the previous application, or
2. the date of a final decision of a court holding the patent(s) which is the subject of the certification to be invalid or not infringed, whichever event occurs first {Section 505(j)(5)(B)(iv)}.

As noted in the Agency's publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" (the "Orange Book"), an abbreviated new drug application for this drug product was approved for Teva Pharmaceuticals USA on August 2, 2001. This application also contained a Paragraph IV Certification and was the first application received by the Agency for this drug product. Consequently, Teva Pharmaceuticals USA became eligible for 180 days of market exclusivity commencing on the date of first commercial marketing. According to the "Orange Book", Teva's market exclusivity expired on January 29, 2002.

We have completed the review of this abbreviated application and have concluded that the drug is safe and effective for use as recommended in the submitted labeling. Accordingly, the application is approved. The Division of Bioequivalence has determined your Fluoxetine Oral Solution USP, 20 mg(base)/5 mL to be bioequivalent to the listed drug (Prozac® Liquid, of Eli Lilly and Company).

Under Section 506A of the Act, certain changes in the conditions described in this abbreviated application require an approved supplemental application before the change may be made.

Post-marketing reporting requirements for this abbreviated application are set forth in 21 CFR 314.80-81 and 314.98. The Office of Generic Drugs should be advised of any change in the marketing status of this drug.

We request that you submit, in duplicate, any proposed advertising or promotional copy which you intend to use in your initial advertising or promotional campaigns. Please submit all proposed materials in draft or mock-up form, not final print.

Submit both copies together with a copy of the proposed or final printed labeling to the Division of Drug Marketing, Advertising, and Communications (HFD-40). Please do not use Form FD-2253

(Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use) for this initial submission.

We call your attention to 21 CFR 314.81(b)(3) which requires that materials for any subsequent advertising or promotional campaign be submitted to our Division of Drug Marketing, Advertising, and Communications (HFD-40) with a completed Form FD-2253 at the time of their initial use.

Sincerely yours,

Gary Buehler
Director
Office of Generic Drugs
Center for Drug Evaluation and Research

APPROVAL